

Subpart 309.4—Debarment, Suspension, and Ineligibility

SOURCE: 50 FR 7780, Feb. 26, 1985, unless otherwise noted.

309.403 Definitions.

Acquiring agency's head or a designee, as used in the FAR, shall mean, unless otherwise stated in this subpart, the head of the contracting activity. Acting in the capacity of the acquiring agency's head, the head of the contracting activity may make the required justifications or determinations, and take the necessary actions, specified in FAR 9.405, 9.406, and 9.407 for his or her respective activity, but only after obtaining the approval of the debarring or suspending official, as the case may be.

Debarring official means the Assistant Secretary for Management and Budget, or his/her designee.

Initiating official means either the contracting officer, the head of the contracting activity, the Deputy Assistant Secretary for Management and Acquisition, or the Inspector General.

Suspending official means the Assistant Secretary for Management and Budget, or his/her designee.

[50 FR 7780, Feb. 26, 1985, as amended at 54 FR 24343, June 7, 1989; 54 FR 43965, Oct. 30, 1989]

309.404 Parties excluded from procurement programs.

(c) The Office of Management and Acquisition (OMAC) shall perform the actions required by FAR 9.404(c).

(4) OMAC shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OMAC review.

[50 FR 7780, Feb. 26, 1985, as amended at 54 FR 24343, June 7, 1989; 54 FR 43966, Oct. 30, 1989]

309.405 Effect of listing.

(a) The head of the contracting activity may, with the concurrence of the debarring or suspending official, make the determinations referenced in FAR

9.405(a), regarding contracts for their respective activities.

(1) If a contracting officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the contracting officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Some examples of circumstances that may constitute a compelling reason for the award to, or consent to a subcontract with, a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor;

(ii) The urgency of the requirement dictates that the Department deal with the listed contractor; or

(iii) There are other compelling reasons which require business dealings with the listed contractor.

(2) If the head of the contracting activity decides to approve the requested action, he/she shall request the concurrence of the debarring or suspending official and, if given, shall, in writing, inform the contracting officer of the decision within the required time period.

309.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment or suspension of a contractor, contracting officers may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the head of the contracting activity or debarring or suspending official directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by the awarding activity's contracting and technical personnel. The contracting officer shall coordinate any termination with the Office of the General Counsel to ensure the propriety of the proposed action.

(b) Contracting officers shall not renew the current contracts of debarred or suspended contractors, or otherwise extend their duration, unless